MUHYIDDIN HJ. MOHD. YASSIN & ANOR.

v.

DOLLAH HJ. SALLEH

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
AJAIB SINGH SCJ
[CIVIL APPEAL NO. 479/1988]
11 OCTOBER 1989

ADMINISTRATIVE LAW: *Declaration - Ultra vires (extension of "defined area") without consent.*

The respondent was a football player playing for the Johore Football Association (JFA). JFA was a member of the Football Association of Malaysia (FAM). A disciplinary order was made against the respondent on 19 July 1988 by JFA banning the respondent from playing football at national and state level. He was also banned from holding any office in any team or football association for 3 years. The respondent appealed to the JFA pursuant to which the ban was reduced in period to be effective until 31 December 1988 and the respondent was allowed to play for the National team, if selected, and for his new employer. The respondent filed an originating summons on 17 August 1988 seeking a declaration that the ban was *ultra vires* the constitution of the JFA. Two points were raised at the appeal:

i) whether the respondent had exhausted all his domestic remedies before coming to Court;

ii) whether the present case could be distinguished from *Haji Osman b. Hj. Aroff v. Abdul Karim b. Pin* in which the Supreme Court had held that the jurisdiction of the kedah football association was confined to the State of Kedah only.

Held:

[1] As the respondent's basic allegation was lack of jurisdiction on the part of the JFA to extend its order beyond the "defined area" of its jurisdiction (i.e., the State area) it was at the discretion of the Court to grant that declaration. The respondent should not be denied excess to the Court even if he had not exhausted his domestic remedy.

[2] The *Osman Aroff* case applied and prior consent of the FAM should be obtained before extending the jurisdiction of a state association beyond the "defined area".

[3] The order made by the JFA was only valid for the State of Johor.

[Appeal dismissed.]

Case referred to:
Haji Osman bin Haji Aroff & Anor. v. Abdul Karim bin Pin [1988] 1 CLJ (Rep) 108

For the appellants - Hj. Mohd. Faidz bin Darus (Hj. Hassan bin Ibrahim and Ibrahim bin Hashim with him); M/s. Hassan Ibrahim & Co.
For the respondent - Mohamad Ibrahim (Vincent Chandran with him); M/s. Mohamad Ibrahim & Co.

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

The respondent, Dollah bin Haji Salleh, was a football player playing for the Johore Football Association (JFA) for the State of Johor from 1982 to 1987. At all materials times JFA was a member of the Football Association of Malaysia (FAM). By an order issued by JFA on 19 July 1988 as a disciplinary action a ban was imposed on the respondent from playing football at national or state level.

He was also banned from holding any office in any team or any football association for a period of three years effective from that date.

On 28 July 1988 the respondent appealed to the JFA. On the same date he also filed a writ in the High Court against the appellants which writ he subsequently withdrew on 8 August 1988. His appeal was heard by the JFA on 15 August 1988 whereupon the ban was reduced in period effective from 18 July 1988 to 31 December 1988 and the respondent was only allowed to play for the national team if selected and for his new employer. The originating summons which resulted in the present appeal was filed on 17 August 1988. The respondent sought for a declaration that the ban imposed on him was *ultra vires* the constitution of the JFA.

Two points were raised in the appeal. Firstly, whether the respondent had exhausted all his domestic remedies before coming to Court. The learned Judge held that he had. The appellants argued that he had not. According to Encik Faidz for the appellants, in considering the constitution of the JFA the constitution of the FAM should also be considered. In the context of domestic remedy available to the respondent, Article 49 and Article 53 of the FAM must be considered. Article 49 of the constitution of FAM purports to confer power of discipline to member associations subject to appeal under Article 53 to be filed with the council of FAM and which cannot be withdrawn except with leave of the council. Article 53 also stipulates that no appeal shall be entertained if the constitution of the member association provides that their decision is final. It was argued on behalf of the appellants that although the constitution of JFA does not provide for the appeal by the respondent, he was nevertheless required to appeal to FAM and this he must do before it could be said he had exhausted all his domestic remedies.

The answer of the learned Judge to this question was as stated in his judgment in that as there was no contractual relationship between the respondent and FAM the respondent was only bound by the constitution of JFA. In other words the respondent could not be held to be legally obliged to appeal to FAM in order to exhaust his domestic remedy.

That may well be a valid argument but we should consider a more basic issue here. The respondent has come to the Court to ask for a declaration. The respondent's basic allegation was lack of jurisdiction on the part of JFA to extend its order beyond the boundary of the State area which was a "defined area" of its jurisdiction. It is in the discretion of the Court to grant or not to grant the declaration. Under the circumstances the respondent should not be denied access to the Court even if he had not exhausted his domestic remedy.

The second point raised in the appeal was whether this case could be distinguishable from *Haji Osman bin Haji Aroff & Anor. v. Abdul Karim bin Pin* [1988] 1 CLJ (Rep) 108. The Supreme Court in that case referred to Article 7(c) of the constitution of FAM and held that the jurisdiction of the Kedah football association was confined to the State of Kedah only. Part of Article 7(c) reads as follows:

Each State association shall cover a defined area and shall neither extend nor alter such area without having obtained the consent of the council.

Under that Article it is clear that the area of jurisdiction of a State football association can only be extended with the consent of the council of the FAM.

In this case the order against the respondent was made on 16 August 1988. However there was a letter dated 18 August 1988 from the FAM to urge member associations to abide by the ruling of the JFA. This letter of the FAM, it was argued, made the case distinguishable from *Osman Aroff*.

We disagreed. In our view territorial jurisdiction is so fundamental that it would be a serious question for the JFA (as well as the FAM) to decide whether to extend the territorial jurisdiction of the State association beyond the area of the State concerned - "the defined area". Such a decision will have serious repercussions and will affect other State associations who may not agree to it.

From the language of Article 7(c) of the Constitution of FAM it is quite clear that the prior consent of the council should be obtained before extending the jurisdiction.

In this case when the order in issue was made on 16 August 1988 the order was valid only for the State of Johor. The appeal was dismissed with costs.

Also found at [1990] 1 CLJ 42